



October 3, 2007

**VIA ECFS**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 Twelfth Street, SW  
Washington, DC 20554

**Re: WC Docket No. 07-151 – North Pittsburgh Systems, Inc. and  
Consolidated Communications Holdings, Inc. Domestic Section 214  
Application for Transfer of Control**

Dear Ms. Dortch:

Core Communications, Inc. (“Core”) fully agrees with and supports the observation of Salsgiver Communications, Inc. (“Salsgiver”) that grant of the Application in this proceeding, without conditions relating to opening competition within North Pittsburgh Systems, Inc.’s (“NPSI’s”) home service territory, would not serve the public interest. The primary reason for this is, in Salsgiver’s words, that “[t]he merger could strengthen the merged entity’s ability to continue NPSI’s anti-competitive conduct.” Comments of Salsgiver Communications, Inc. (“Salsgiver Comments”) at 1.

Core’s experience with NPSI’s advocacy before the Pennsylvania Public Utilities Commission (“PUC”) is that NPSI will pursue every possible legal and procedural resource in order to maintain its home service territory free from competition. While every company of course may pursue its rights through litigation, there comes a point at which litigation (and more specifically, re-litigation) becomes a bad faith delay tactic, devoid of any legitimate business purpose. It is reasonable to believe that NPSI’s value to its proposed acquirer is premised at least in part on NPSI’s legalistic tactics and resulting insulation from competition. Approving the proposed merger without conditions will only reward such tactics and strengthen the merged entity’s ability to engage in more and expanded dilatory tactics.

Salsgiver amply describes NPSI’s delays in providing pole attachments to its facilities-based competitors pursuant to section 224 of the Act, 47 U.S.C. § 224. Salsgiver Comments at 6-8. Core’s experience in seeking facilities-based interconnection with NPSI pursuant to section 251 of the Act, 47 U.S.C. § 251, has been very similar to that of Salsgiver and other facilities-based carriers who have sought pole attachments from NPSI. In 2005, Core filed an application with the PUC to expand its existing facilities-based local exchange authority from the legacy Bell Atlantic and GTE territories to include NPSI’s home service territory. Concurrently, Core initiated negotiations for an interconnection agreement with NPSI, and subsequently filed an

interconnection agreement arbitration proceeding against NPSI in 2006. In the certification expansion proceeding, NPSI raised a number of baseless arguments regarding Core's services and operations. Much like its advocacy in the pole attachment cases, NPSI sought to avoid its obligations under the Act by attacking its competitor's status as a local exchange carrier, even though Core had been operating under such authority granted by the PUC for many years. Core was forced to incur great expense in defending itself. The PUC rejected all of NPSI's arguments, and granted Core's certification petition, by order of December 4, 2006.

In a clear showing of disdain for the PUC's order, NPSI continues to raise the exact same arguments in Core's arbitration case as it did in Core's certification case. In addition, NPSI sought a stay of Core's arbitration case pending NPSI's appeal of the PUC's certification order. The PUC has rejected NPSI's stay request, but Core's arbitration case remains bogged down. The legacy of NPSI's litigation tactics has been delay, delay, delay. First initiated in 2006, Core's arbitration against NPSI now stands in a preliminary phase, with Core's motion for summary judgment regarding NPSI's duplicative and previously determined certification issues having been recently filed. Thanks to NPSI's abuse of the PUC's certification and arbitration procedures, there is no predictable timetable on when Core can expect resolution of the case, never mind actual interconnection with NPSI.

Core is not alone in viewing NPSI's dilatory tactics as anti-competitive and harmful to the public interest. In the wake of Core's certification in December, 2006, the PUC initiated a proceeding to consider modification to its application procedures, in particular for certification in rural telephone company service territories.<sup>1</sup> In response, the United States Department of Justice ("Justice Department") filed comments highlighting the problem of rural telephone company delay tactics. The Justice Department noted that "there are a number of examples of application to provide service in rural areas that the PUC ultimately approved, where ILEC protests significantly delayed entry, even well in excess of a year."<sup>2</sup> The Justice Department further noted that "the possibility to delay entry by filing a protest and initiating an ALJ hearing creates opportunities for ILECs to exact anticompetitive terms and conditions from the entrant.... Beyond this abuse of the regulatory process, such agreements by competitors or prospective competitors to divide territories or not compete in certain territories are among the most serious antitrust law problems."<sup>3</sup>

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<sup>1</sup> Tentative Order, *Proposed Modifications to the Application Form for Approval of Authority to Offer, Render, Furnish or Supply Telecommunications Services to the Public in the Commonwealth of Pennsylvania*, Pa. P.U.C. Docket No. M-00960799, published in 37 Pa.B. 486 (Jan. 27, 2007).

<sup>2</sup> Comments of the United States Department of Justice, *Proposed Modifications to the Application Form for Approval of Authority to Offer, Render, Furnish or Supply Telecommunications Services to the Public in the Commonwealth of Pennsylvania*, Pa. P.U.C. Docket No. M-00960799, at 8 (March 27, 2007).

<sup>3</sup> *Id.*, at 9.

While the Justice Departments lists several “examples of such agreements,” Core notes as one additional example the fact that the current, filed ICA between NPSI and MCImetro Access Transmission Services, Inc. provides:

10. Number Portability - Section 251(B)(2)

The Parties agree that they will not request nor provide Local Number Portability (“LNP”) to each other during the term of this Agreement.<sup>4</sup>

Core submits that a competitor’s agreement to forego its own end users’ rights to retain their telephone number upon moving to the competitor’s service is strong evidence that anticompetitive conditions prevail in NPSI’s home service territory.

NPSI neither acknowledges nor remedies its proven status as a staunch—and largely successful—opponent of competitive entry within its home service territory. Accordingly, Core agrees with Salsgiver’s reasoned conclusion that “the strengthening of NPSI’s financial backing and the company’s announced plans to begin providing video services . . . would heighten the company’s incentive and ability to block other service provider’s entry. Salsgiver Comments at 7.

Respectfully submitted,

**WOMBLE CARLYLE SANDRIDGE & RICE**  
*A Professional Limited Liability Company*

  
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<sup>4</sup> This provision is found within Attachment B of the ICA, which is published in full at:  
<http://www.puc.state.pa.us/PcDocs/548615.pdf>.